

## **REMARKS**

Claims 1-39 are pending in the application. It is gratefully acknowledged that Claims 22-29 are allowed. The Examiner has rejected Claims 1, 4, 8, 11, 15, 16 and 18 under 35 U.S.C. §102(e) as being anticipated by Esteves et al. (U.S. Patent 6,205,129). The Examiner has rejected Claims 7, 14, 17, 19, 30, 33, 36 and 37 under 35 U.S.C. §103(a) as being unpatentable over Esteves et al. in view of Proposed HDR Standard (3GPP2-C00-20000327). The Examiner has rejected Claims 2, 5, 9, 12, 20, 31, 34 and 38 under 35 U.S.C. §103(a) as being unpatentable over Wada (U.S. Patent 5,689,503). The Examiner has rejected Claims 3, 6, 10, 13, 21, 32, 35 and 39 under 35 U.S.C. §103(a) as being unpatentable over Esteves et al. in view of Wada, and further in view of Proposed HDR Standard.

Please amend Claims 1, 4, 8, 11 and 15 as set forth herein. No new matter has been added.

Regarding the rejection of independent Claims 1, 4, 8, 11 and 15 under §102(e), the Examiner states that Esteves et al. anticipates all of the elements of the claims. Esteves et al. discloses a method and apparatus for variable and fixed forward link rate control in a mobile radio communications system. Each of Claims 1, 4, 8, 11 and 15 recites “a data rate control (DRC) request indicator (DRI) bit”. The Examiner maintains that the “balanced state bit” of Esteves et al. is equivalent to the DRI bit of the present application. The DRI bit of the claims of the present application is a bit used to request data rate control. The Examiner quotes the Specification at page 8, lines 16-23, wherein it states, “The DRI bit indicates whether DRC information is needed for scheduling after a predetermined slot period.” The DRI bit is used to selectively provide DRC information. Esteves et al. defines the “balanced state bit” at col. 4, lines 37-42, “if the base station is able to reliably receive DRC messages from the mobile station on the data rate control channel, the base station sends a balanced state bit (i.e., the bit is set to 0 or 1) to the mobile station indicating that the base station is reliably receiving the DRC messages.” The DRI bit of the present application indicates if the DRC message is required; the balanced state bit of Esteves et al. indicates if the DRC information is being received. Indicating

if information is received cannot be equated with indicating if information is needed. The “balance state bit” cannot anticipate the DRI bit. In order to assist in a clear distinguishing between the claims and the reference, we recommend amending independent Claims 1, 4, 8, 11 and 15 to recite that the DRI bit indicates if the DRC information is required, as alluded to on page 15 of the Office Action.

Based on at least the foregoing, withdrawal of the rejection of independent Claims 1, 4, 8, 11 and 15 under §102(e) is respectfully requested.

Regarding the rejection of independent Claims 30, 33 and 37 under §103(a), the Examiner states that Esteves et al. in view of the Proposed HDR Standard renders the claims unpatentable. Each of independent Claims 30, 33 and 37 recite, in one form or another, that a last slot is determined, and that the DRC information is generated in at least one predetermined slot, the at least one predetermined slot being before the last slot and after the packet data and in the first transmission period. Estevez et al. monitors each time slot; Esteves does not specifically determine (or check for) the last time slot. Esteves et al. does not transmit the DRC information between the packet data and the last slot of the first transmission period. The Proposed HDR Standard in FIG. 9-10 clearly illustrates that start of the DRC is during the packet data, i.e. “pilot/DRC<sub>n</sub>” begins transmission during “AN Sending DATA<sub>n</sub>” and during “AT receiving DATA<sub>n</sub> and PILOT<sub>n</sub>”. Therefore, neither Esteves nor the Proposed HDR Standard, or any combination thereof, teaches or discloses that the DRC information is generated in at least one predetermined slot before the last slot and after the packet data and in the first transmission period.

In addition, since pages 9-23, paragraphs 9.2.1.3.2.2.2.1 and FIG. 9-10 of the proposed HDR Standard discloses an AT transmitting DRC to a AN, and pages 8-29, paragraphs 8.4.5.4 of the proposed HDR Standard discloses an AN transmitting an FAC to an AT, it is readily apparent that these sections cannot be combined.

Based on at least the foregoing, withdrawal of the rejection of independent Claims 30, 33

and 37 under §103(a) is respectfully requested.

As a final matter, and the Examiner's citation of In re Keller is not on point, since the references are not being addressed separately, but in combination with each other.

Independent Claims 1, 4, 8, 11, 15, 22, 25, 30, 33 and 37 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 3, 5-7, 9, 10, 12-14, 16-21, 23, 24, 26, 27-29, 31, 32, 34-36, 38 and 39, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 3, 5-7, 9, 10, 12-14, 16-21, 23, 24, 26, 27-29, 31, 32, 34-36, 38 and 39 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-39, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicant's attorney at the number given below.

Respectfully submitted,



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